R e m a r k s

Claims 1-22 are pending in the application, with claims 1 and 14 being independent.

Claims 1, 3-15 and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott et al. US 20040022237, hereinafter "Elliott" in view of H. Schulrinne et al. IETF RFC 3550 "RTP: A Transport Protocol for Real-Time Applications," July 2003, hereinafter "RFC 3550," further in view of Szabo US20020003779 A1, hereinafter Szabo.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott in view of RFC 3550 and Szabo, further in view of Watt US Patent number 5781532, hereinafter Watt.

Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott in view of RFC 3550 and Szabo, further in view of Hooper et al. U.S. 20040252686 A1, hereinafter Hooper.

Each of the various rejections and objections are overcome by amendments that are made to the specification, drawing, and/or claims, as well as, or in the alternative, by various arguments that are presented.

Any amendments to any claim for reasons other than as expressly recited herein as being for the purpose of distinguishing such claim from known prior art are not being made with an intent to change in any way the literal scope of such claims or the range of equivalents for such claims. They are being made simply to present language that is better in conformance with the form requirements of Title 35 of the United States Code or is simply clearer and easier to understand than the originally presented language. Any amendments to any claim expressly made in order to distinguish such claim from known prior art are being made only with an intent to change the literal scope of such claim in the most minimal way, i.e., to just avoid the prior art in a way that leaves the claim novel and not obvious in view of the cited prior art, and no equivalent of any subject matter remaining in the claim is intended to be surrendered.

Also, since a dependent claim inherently includes the recitations of the claim or chain of claims from which it depends, it is submitted that the scope and content of any dependent claims that have been herein rewritten in independent form is exactly the same

as the scope and content of those claims prior to having been rewritten in independent form. That is, although by convention such rewritten claims are labeled herein as having been "amended," it is submitted that only the format, and not the content, of these claims has been changed. This is true whether a dependent claim has been rewritten to expressly include the limitations of those claims on which it formerly depended or whether an independent claim has been rewritten to include the limitations of claims that previously depended from it. Thus, by such rewriting no equivalent of any subject matter of the original dependent claim is intended to be surrendered. If the Examiner is of a different view, he is respectfully requested to so indicate.

Claim Amendments

Applicants have herein amended claims 1-6 and 9-22. Applicants have herein cancelled claims 7-8. Applicants have added new claims 23 – 33. No new matter has been entered.

Rejection Under 35 U.S.C. 103(a)

Claims 1, 3-15 and 18-22

Claims 1, 3-15 and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott in view of RFC 3550 and Szabo. The rejection is traversed.

Elliott, RFC 3550 and Szabo, alone or in combination, fail to teach or suggest all of the elements of Applicants' claim 1.

Namely, Elliott, RFC 3550 and Szabo, alone or in combination, fail to teach or suggest:

1.   A method for determining whether to accept a new call to be routed from a first gateway to a second gateway in an IP network, the method comprising the steps of:
    obtaining, at the first gateway, information indicative of the quality of service of voice calls being transmitted from the first gateway to the second gateway via a plurality of network paths between the first gateway and the second gateway;
    determining, using at least a portion of said information, a plurality of congestion status parameters indicative of respective congestion statuses of the network paths; and

determining, using at least one of the congestion status parameters, whether to accept the new call into the network at the first gateway for transmission toward the second gateway via one of the network paths.
[Applicants' Claim 1, Emphasis added].

Elliott discloses an architecture for communicating voice and data over a packet-switched network. Specifically, Elliott discloses that the architecture includes soft switch sites, a data network, a provisioning component, a network event component, and a network management component. (Elliott, Abstract).

Elliott, however, fails to teach or suggest determining, using information indicative of the quality of service of voice calls being transmitted from a first gateway to a second gateway via a plurality of network paths between the first gateway and the second gateway, a plurality of congestion status parameters indicative of respective congestion statuses of a plurality of network paths between a first gateway and a second gateway, as claimed in Applicants' claim 1.

Rather, although Elliott describes a system that permits packet switching of voice calls and data calls through a data network, Elliott is primarily directed toward management of gateway sites using soft switch sites, call setup and teardown, provisioning and network event management, and related functions. Elliott fails to teach or suggest obtaining information indicative of the quality of service of voice calls being transmitted from a first gateway to a second gateway via a single network path, much less obtaining information indicative of the quality of service of voice calls being transmitted from a first gateway to a second gateway via a plurality of network paths between the first gateway and the second gateway. Similarly, Elliott also fails to teach or suggest determining a congestion status parameter indicative of a congestion status of a single network path between a first gateway and a second gateway, much less determining a plurality of congestion status parameters indicative of respective congestion statuses of a plurality of network paths between a first gateway and a second gateway, as claimed in Applicants' claim 1.

Thus, Elliott fails to teach or suggest determining, using information indicative of the quality of service of voice calls being transmitted from a first gateway to a second gateway via a plurality of network paths between the first gateway and the second gateway, a plurality of congestion status parameters indicative of respective congestion

statuses of a plurality of network paths between a first gateway and a second gateway, as claimed in Applicants' claim 1.

RFC 3550 discloses the Real-Time Transport Protocol (RTP). Specifically, RFC 3550 discloses message formats, header fields, session multiplexing, and other specifics of the RTP. Additionally, RFC 3550 discloses details of the RTP Control Protocol (RTCP), such as packet formats, packet send and receive rules, and other specifics of the RTCP.

RFC 3550, however, fails to teach or suggest determining, using information indicative of the quality of service of voice calls being transmitted from a first gateway to a second gateway via a plurality of network paths between the first gateway and the second gateway, a plurality of congestion status parameters indicative of respective congestion statuses of a plurality of network paths between a first gateway and a second gateway, as claimed in Applicants' claim 1.

Rather, although RFC 3550 discloses RTCP sender and receiver reports, RFC 3550 merely describes the format of such reports and information that may be included within such reports. RFC 3550 is devoid of any teaching or suggestion of determining a congestion status parameter indicative of a congestion status of a network path between a first gateway and a second gateway based on the information in such reports, much less determining a plurality of congestion status parameters indicative of respective congestion statuses of a plurality of network paths between a first gateway and a second gateway based on the information in such reports.

Thus, RFC 3550 fails to teach or suggest determining, using information indicative of the quality of service of voice calls being transmitted from a first gateway to a second gateway via a plurality of network paths between the first gateway and the second gateway, a plurality of congestion status parameters indicative of respective congestion statuses of a plurality of network paths between a first gateway and a second gateway, as claimed in Applicants' claim 1.

Furthermore, Szabo fails to bridge the substantial gap between Elliott and RFC 3550 and Applicants' claim 1.

Szabo discloses a system for setting up a call in an IP network. As disclosed in Szabo, an IP telephony gateway that receives an incoming call is given a performance

threshold condition for at least one performance indicator obtained from a monitoring mechanism for monitoring the performance quality of ongoing calls, and the incoming call is accepted if the threshold condition is fulfilled. (Szabo, Abstract).

Szabo, however, fails to teach or suggest determining, using information indicative of the quality of service of voice calls being transmitted from a first gateway to a second gateway via a plurality of network paths between the first gateway and the second gateway, a plurality of congestion status parameters indicative of respective congestion statuses of a plurality of network paths between a first gateway and a second gateway, as claimed in Applicants' claim 1.

Rather, Szabo merely includes general statements indicating that the IP telephony gateways have access to monitoring mechanisms for monitoring the quality of ongoing calls, for use in determining whether to accept or reject an incoming call. For example, Szabo states that "...the IP telephony gateway 109 collects statistics from a number of ongoing calls for determining whether to accept or reject an incoming call, based on the collected statistics." (See Szabo, Para. [0026]). Szabo is devoid of any teaching or suggestion of determining a plurality of congestion status parameters indicative of respective congestion statuses of a plurality of network paths between the IP telephony gateways.

Thus, Szabo fails to teach or suggest determining, using information indicative of the quality of service of voice calls being transmitted from a first gateway to a second gateway via a plurality of network paths between the first gateway and the second gateway, a plurality of congestion status parameters indicative of respective congestion statuses of a plurality of network paths between a first gateway and a second gateway, as claimed in Applicants' claim 1.

Therefore, since Elliott, RFC 3550, and Szabo each fail to teach or suggest determining, using information indicative of the quality of service of voice calls being transmitted from a first gateway to a second gateway via a plurality of network paths between the first gateway and the second gateway, a plurality of congestion status parameters indicative of respective congestion statuses of a plurality of network paths between a first gateway and a second gateway, a combination of Elliott, RFC 3550, and Szabo (assuming *arguendo* that such a combination is even possible) must fail to teach or

suggest determining, using information indicative of the quality of service of voice calls being transmitted from a first gateway to a second gateway via a plurality of network paths between the first gateway and the second gateway, a plurality of congestion status parameters indicative of respective congestion statuses of a plurality of network paths between a first gateway and a second gateway, as claimed in Applicants' claim 1.

Furthermore, since a combination of Elliott, RFC 3550, and Szabo fails to teach or suggest determining a plurality of congestion status parameters indicative of respective congestion statuses of a plurality of network paths, a combination of Elliott, RFC 3550, and Szabo also must fail to teach or suggest determining, using at least one of a plurality of congestion status parameters associated with a respective plurality of network paths, whether to accept a new call into a network, as recited in Applicants' claim 1.

As such, at least for these reasons, Elliott, RFC 3550, and Szabo, alone or in combination, fail to teach or suggest all of the elements of Applicants' claim 1.

Thus, Applicants' claim 1 is allowable over the combination of Elliott, RFC 3550 and Szabo. Similarly, Applicants' claim 14 recites limitations similar to the limitations of Applicants' claim 1 and, thus, at least for the same reasons provided with respect to claim 1, claim 14 also is allowable over the combination of Elliott, RFC 3550 and Szabo. Furthermore, since all of the dependent claims that depend from the independent claim include all the limitations of the respective independent claim from which they ultimately depend, each such dependent claim is also allowable over the combination of Elliott, RFC 3550 and Szabo.

Therefore, the rejection should be withdrawn.

Claims 2, 16-17

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott in view of RFC 3550 and Szabo, further in view of Watt. Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott in view of RFC 3550 and Szabo, further in view of Hooper et al. U.S. 20040252686 A1, hereinafter Hooper. The rejections are traversed.

Each ground of rejection applies only to dependent claims, and each is predicated on the validity of the rejection under 35 U.S.C. 103 given Elliott in view of RFC 3550 and Szabo. Since the rejection under 35 U.S.C. 103 given Elliott in view of RFC 3550 and Szabo has been overcome, as described hereinabove, and there is no argument put forth by the Office Action that Watt or Hooper supplies that which is missing from Elliott in view of RFC 3550 and Szabo to render the independent claims obvious, these grounds of rejection cannot be maintained.

Therefore, the rejection should be withdrawn.

Conclusion

It is respectfully submitted that the Office Action's rejections have been overcome and that this application is now in condition for allowance. Reconsideration and allowance are, therefore, respectfully solicited.

If, however, the Examiner still believes that there are unresolved issues, the Examiner is invited to call Eamon Wall at (732) 842-8110 so that arrangements may be made to discuss and resolve any such issues.

Respectfully submitted,

Dated: 3/29/10

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